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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,095	09/20/2006	Valerie Frankard	14546-00001-US	4358
23416 7590 12/28/2009 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899				
EXAMINER COLLINS, CYNTHIA E				
ART UNIT 1638		PAPER NUMBER		
MAIL DATE 12/28/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,095

Applicant(s)

FRANKARD, VALERIE

Examiner

Cynthia Collins

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-18 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-9, 12, 13, 15-18, 20, 21, 23-25 and 27 is/are allowed.
- 6) ☒ Claim(s) 5 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 15, 2009 has been entered.

Claims 2, 9, 14 and 19 are cancelled.

Claims 1, 3, 4, 5, 8, 13, 16, 18, 20 and 21 are currently amended.

Claims 10-11 and 22 are withdrawn.

Claims 25-27 are new.

Claims 1-13, 15-18 and 20-27 are pending.

Claims 1-9, 12-13, 15-18, 20-21 and 23-27 are examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

All previous objections and rejections not set forth below have been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 5 is drawn to a method for increasing seed yield relative to corresponding wild type plants, comprising introducing into a plant a nucleic acid encoding a D-type Cyclin Dependent Kinase (CDKD) wherein the nucleic acid comprises a nucleic acid sequence that is an alternative splice variant of a nucleic acid represented by the sequence of SEQ ID NO: 1, an allelic variant of a nucleic acid represented by the sequence of SEQ ID NO: 1, or a homologue, derivative or active fragment of an amino acid sequence represented by the sequence of SEQ ID NO: 2. However, neither the specification nor the prior art of record describe the structure of any alternative splice variant, allelic variant or homologue or derivative of SEQ ID NO:1, or active fragment of SEQ ID NO: 2.

The Federal Circuit has clarified the application of the written description requirement to nucleic acids. The court stated that “A description of a genus of cDNAs may be achieved by means of recitation of a representative number of cDNAs, defined by nucleotide sequence, falling within the scope of the genus or of a recitation of structural features common to members of the genus, which features constitute a substantial portion of the genus.” See *University of California v. Eli Lilly and Co.*, 119 F.3d 1559, 1569; 43 USPQ2d 1398, 1406 (Fed. Cir. 1997). The court has also affirmed the PTO's applicable standard for determining compliance with the written description requirement, quoting from the PTO's Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112, P1, “Written Description” Requirement, 66 Fed. Reg.

1099, 1106, where it is set forth that the written description requirement can be met by “show[ing] that an invention is complete by disclosure of sufficiently detailed, relevant identifying characteristics ... i.e., complete or partial structure, other physical and/or chemical properties, functional characteristics when coupled with a known or disclosed correlation between function and structure, or some combination of such characteristics.” See *Enzo Biochem Inc. v. Gen-Probe Inc.*, 63 USPQ2d 1609, 1613 (CAFC 2002).

In the instant case Applicant has not described a representative number of species falling within the scope of the claimed genus which encompasses alternative splice variants, allelic variants and homologues and derivatives of SEQ ID NO:1, and active fragments of SEQ ID NO: 2. , nor the structural features unique to the genus.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Jofuku et al. (U.S. Patent No. 6,329,567 issued December 11, 2001).

The claim is drawn to a method for obtaining plants having increased seed yield relative to a corresponding wild type plant comprising (a) cultivating a transgenic plant or transgenic seed, which plant or seed comprises a CDKD-encoding nucleic acid or a nucleic acid which encodes a CDKD comprising an NXTALRE motif (SEQ ID NO: 6) and a catalytic kinase

domain; (b) obtaining a transgenic plant having increased seed yield relative to a corresponding wild type plant; and optionally (c) harvesting transgenic seed from the transgenic plant obtained in step (b).

Jofuku et al. teach a method for obtaining plants having increased seed yield relative to a corresponding wild type plant comprising cultivating a transgenic plant or transgenic seed and obtaining a transgenic plant having increased seed yield relative to a corresponding wild type plant (column 38). The transgenic plants taught by Jofuku et al. inherently comprise a CDKD-encoding nucleic acid or a nucleic acid which encodes a CDKD because such nucleic acids are native to their genome. Amendment of the claim to indicate that the transgenic plant or transgenic seed are transformed with or are transgenic for a CDKD-encoding nucleic acid or a nucleic acid which encodes a CDKD would overcome the rejection.

Allowable Subject Matter

Claims 1-4, 6-9, 12-13, 15-18, 20-21, 23-25 and 27 are allowed.

Remarks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cynthia Collins/
Primary Examiner, Art Unit 1638

CC